

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
LUBBOCK DIVISION

IN RE:	§	
	§	
AMERICAN COTTON SUPPLIERS	§	CASE NO. 02-50003-7
INTERNATIONAL, INC.,	§	
	§	
Debtor	§	

IN RE:	§	
	§	
BILLIE WAYNE SPRADLING JR.,	§	CASE NO. 02-50004-7
	§	
Debtor	§	

IN RE:	§	
	§	
CHARLES L. SPRADLING,	§	CASE NO. 02-50005-7
	§	
Debtor	§	

MEMORANDUM OPINION AND ORDER ON
MOTION FOR AWARD OF ATTORNEYS' FEES AND COSTS
PURSUANT TO F.R.C.P. 37

Before the court is the motion of Compagnie Cotonniere, Inc. (Copaco) seeking an award of attorneys' fees and costs pursuant to F.R.C.P. 37 with affidavits filed in support thereof. The court heard arguments on the motion on July 24, 2002, and advised the parties that the matter would be taken under advisement as the court wished to consider the matter in connection with the trial of the adversary proceeding that resulted from the filing of these involuntaries.

The court has by separate memorandum opinion and order held that relief should be ordered in each of these cases under section 303(h) of the Bankruptcy Code. The court takes notice of its findings and conclusions made in connection with its ruling on the involuntary petitions.

Copaco filed these involuntary petitions against the Debtors on January 2, 2002. On March 14, 2002, Copaco served its notices of intention to take oral deposition and subpoena duces tecum of Billie Wayne Spradling Jr. and Charles Spradling on opposing counsel. On April 4, 2002, Copaco served its notice of intention to take oral deposition and subpoena duces tecum of Grady Terrill and Steve Claus.

On April 8, 2002, Copaco filed its motion and supporting brief to compel production of documents, and filed its supplemental motion and brief to compel production of documents on April 11, 2002. On April 12, 2002, the court issued its memorandum opinion and order directing the Alleged Debtors to comply with the requests for discovery. On May 10, 2002, Copaco filed its motion to compel compliance with court order providing for production of documents. The court entered its order on Copaco's May 10 motion directing that the Debtors comply with the discovery requests and allowing counsel for Copaco to file an affidavit in support of attorneys' fees as sanctions against the alleged Debtors. Copaco submits that it has incurred \$20,172.50 in fees associated with the discovery violations. The affidavit of Copaco's counsel, David R. Langston, was submitted in support of Copaco's motion.

Upon consideration of the evidence and arguments presented, the court finds an award of sanctions in this case is appropriate. The court finds that Debtors failed in the following particulars:

- Failure by Billie Wayne Spradling Jr. to appear for deposition upon proper notice and to produce documents properly requested.
- Billie Wayne Spradling Jr. stating under oath at his deposition that he has no creditors, when in fact he did, and refusing to provide relevant information because it was too burdensome and difficult.

- Charles Spradling's failure to appear at his deposition and then, upon rescheduling the deposition, failing to produce properly requested documents.
- Billie Wayne Spradling Jr., Charles Spradling, and American Cotton Supplies International Inc. (ACSI), through its principals, Billie Wayne Spradling Jr. and Charles Spradling, producing documents and stating they were responsive to proper requests when in fact they were not, or that documents produced represented all documents responsive to the request when in fact they did not.
- Billie Wayne Spradling Jr., Charles Spradling, and American Cotton Supplies International Inc. (ACSI), through its principals, Billie Wayne Spradling Jr. and Charles Spradling, forcing Copaco's counsel to review and obtain documents from Debtor's accountants when such documents should have been produced initially by the Debtors as the real parties holding possession and control of the documents.
- Billie Wayne Spradling Jr., Charles Spradling, and American Cotton Supplies International Inc. (ACSI), through its principals, Billie Wayne Spradling Jr. and Charles Spradling, failing to timely produce properly requested documents after being directed to do so by orders of the court.
- Billie Wayne Spradling Jr., Charles Spradling, and American Cotton Supplies International Inc. (ACSI), through its principals, Billie Wayne Spradling Jr. and Charles Spradling, generally not producing documents until after multiple requests and demands were made by Copaco.
- Billie Wayne Spradling Jr., Charles Spradling, and American Cotton Supplies International Inc. (ACSI), through its principals, Billie Wayne Spradling Jr. and Charles Spradling, failing to timely provide a privilege log regarding documents being withheld after being ordered to do so by the court.

As referenced in the court's April 12, 2002, memorandum opinion, the court understands that, given the expedited trial schedule required by the involuntary petitions, the time frame to perform discovery was severely compressed. This created some hardship for the Debtors and excuses them in part. However, the Debtors' failures here occurred throughout the discovery process and demonstrated an indifference to the duties and obligations imposed upon them as litigants in federal court. They were, at every step, non-responsive, evasive, and difficult.

Additionally, the deposition testimony of Debtors' experts, Steve Claus and Grady Terrill, was also evasive, non-responsive, and lacked candor. The court does not, however, believe that the Debtors should be responsible for fees incurred in connection with Claus's and Terrill's testimony.

Copaco requests the sum of \$20,172.50. The Debtors do not dispute the reasonableness of the fees; they assert that, in some instances, the fees would have been incurred regardless.

The court is of the opinion that, in accordance with Rule 37 of the Federal Rules of Civil Procedure, Copaco should be awarded \$15,000 for fees incurred because of discovery violations, and that such amount be levied against the Debtors jointly and severally.

The court further finds that, upon review of the itemization of fees and expenses submitted by Copaco's attorneys, the entirety of the fees, the \$20,172.50, is reasonable, and therefore allowable as an administrative claim under section 503(b)(3) and (4) of the Code.

It is therefore,

ORDERED that Copaco is awarded \$15,000 of attorneys' fees incurred for Debtors' discovery violations; it is further

ORDERED that the \$15,000 award shall be recoverable against the Debtors jointly and severally; it is further

ORDERED that the entirety of the requested fees, the \$20,172.50, shall constitute an administrative claim under section 503(b)(3) and (4) of the Code.¹

¹The court is not limiting Copaco's claim for attorney's fees and expenses as an administrative claim under section 503(b)(3) and (4) to the \$20,172.50. The court recognizes that such fees represent work performed in connection with the discovery issues.

DATED: September 30, 2002.

ROBERT L. JONES
UNITED STATES BANKRUPTCY JUDGE